

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

6/14/2022

2. Department

California Department of Public Health

3. Organizational Placement (Division/Branch/Office Name)

Office of Legal Services

4. CEA Position Title

Assistant Chief Counsel

5. Summary of proposed position description and how it relates to the program's mission or purpose.
(2-3 sentences)

The California Department of Public Health (CDPH) requests approval to establish the CEA B, Assistant Chief Counsel, Administrative Litigation team, to serve as house counsel to the Center for Health Care Quality (CHCQ), the Human Resources Division (HRD) and the Office of Compliance (OOC), as well as planning, organizing, and directing representation for state-wide administrative litigation and policy advice related to administrative litigation for the CDPH programs in support of the CDPH's mission and strategic direction.

6. Reports to: (Class Title/Level)

Chief Counsel/Deputy Director, Office of Legal Services

7. Relationship with Department Director (*Select one*)

- ☐ Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- ☒ Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(*Explain*): This position works closely with the deputy directors and the directorate to ensure that the Department is following the proper rules as they relate to administrative litigation.

8. Organizational Level (*Select one*)

- ☐ 1st ☐ 2nd ☒ 3rd ☐ 4th ☐ 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The CEA position serves as the Assistant Chief Counsel (ACC) over the Administrative Litigation (Ad Lit) Team, including a Civil Servant ACC, within the Office of Legal Services (OLS). As such, this position plans, organizes, and directs the provision of representation for state-wide administrative litigation and policy advice related to administrative litigation for the California Department of Public Health (CDPH) programs. The CEA also develops policy, and oversees policy advice given, on the enforcement of regulatory actions with CDPH. This position advises the Human Resources Division (HRD) related to employee discipline and other personnel issues and also oversees the employee discipline cases that result from various discipline actions taken by CDPH.

Responsibilities of the CEA position include ongoing analysis of operational performance of attorney staff to ensure objectives are met, and monitoring and assessing areas of potential cost reduction, program improvement, or policy change. The CEA B participates in policy making decisions that impact program clients including the Center for Healthcare Quality (CHCQ), the HRD and the Office of Compliance (OOC), as well as policy making decisions that impact staff and the public. This includes but is not limited to proposed legislation, regulations, and internal operational policies that drive program functions and serve the Department's mission. The CEA B formulates and develops administrative litigation policies and ensures consistent implementation of administrative litigation policies by subordinate attorneys. Provides legal advice and support directly to the Director, the Director's staff, and all members of the CDPH Executive Management Team regarding sensitive and/or controversial issues related to employee discipline. Serves as a senior management sponsor, business lead, or team member in enterprise-wide department projects. Leverages technology to improve administrative litigation services.

The Ad Lit ACC, CEA B oversees legal matters in the following areas:

Administrative litigation for CHCQ licensing and certification division that regulates more than 11,000 licensed entities through investigations of, and licensing and certifying of health facilities, health professionals and paraprofessionals, health care provider education and emergency preparedness to ensure compliance with State and federal laws that protect patient health.

Administrative litigation for Stop Tobacco Access to Kids Enforcement (STAKE) program which investigates retail sites to determine if a retailer is complying with laws which prohibit selling, giving, or in any way furnishing tobacco products to persons under 21 years of age.

Develops policies related to the CDPH administrative hearings, including setting priorities and developing litigation strategies, such as when to appeal, when to recommend alteration of proposed decisions or what legal arguments are appropriate based on the overall department mission and goals.

Manages assignments of subordinate attorneys and staff to ensure accurate and consistent implementation of legal policies and timely responses to legal services related to administrative litigation which includes: legal advice, legal opinions, planning legal strategy, and representation in administrative hearings.

Develops and maintains effective partnerships with CDPH Executive Management regarding sensitive and/or controversial issues related to administrative litigation and employee discipline. Serves as liaison to Office of Administrative Law, Office of Administrative Hearings and Appeals and State Personnel Board regarding the rules related to, and the conduct of, administrative hearings.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- ☒ Program is directly related to department's primary mission and is critical to achieving the department's goals.
- ☐ Program is indirectly related to department's primary mission.
- ☐ Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: CDPH is committed to advancing the health and well-being of California's diverse people and communities. CDPH provides critical services to the public including infectious disease control and prevention, food safety, licensing of healthcare staff and facilities, environmental health, laboratory services, patient safety, emergency preparedness, chronic disease prevention and health promotion, family health, health equity and vital records and statistics.

The Office of Legal Services serves a critical role in supporting CDPH's vision, mission, and strategic direction. The CEA ACC will develop policies, procedures, and strategies to advise on the development and enforcement of key department programs to fulfill the department's mission. Specifically, CHCQ's protection of the public through licensing and certification, HRD's attraction and retention of a qualified workforce, and OOC's enforcement of compliance activities.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

The Ad Lit team handles all administrative litigation for some of the highest output programs, including HRD, CHCQ, the STAKE program, and OOC.

CDPH currently has over 4000 employees, aligned with 14 different bargaining units and over 300 different job classifications. Effective July 1, 2022, CDPH will receive approximately 700 new positions and is expected to receive several hundred additional positions in the coming fiscal years.

Ad Lit serves as house counsel to high output programs that are expanding based on additional positions coming to CDPH effective July 1, 2022 and in subsequent fiscal years. The expansion of these high output programs, including taking on additional programmatic responsibilities, has expanded the work of the Ad Lit team.

The amount of policy and legal support needed by HRD related to the COVID-19 pandemic created a new set of work for the Ad Lit team. Additionally, the OOC took on additional internal audit work and enterprise risk management, which increased legal support needs. The number of Food and Drug Branch STAKE program appeals have almost doubled since 2020 (54 in 2020, 98 in 2021, as of 10/26/2021) creating added work for Ad Lit.

COVID-19 response has fundamentally changed how OLS provides support to programs. All centers/divisions/offices within CDPH have been at the forefront of implementing policies, programs, mandates, guidance and requirements related to COVID-19. Ad Lit is an integral part of the planning and implementation of these activities. Given the high visibility and sensitivity of COVID-19 and the associated funding streams, HRD, OOC and all centers/divisions/offices within CDPH have had an increased need for administrative litigation support and counsel. COVID-19 is not going away and we are forever changed, so the expanded role of the Ad Lit team is not anticipated to diminish over time.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

Ad Lit, like the rest of OLS, works in conjunction with policy makers, as a critical team member, on policy formulation and decision-making. OLS serves a critical role in COVID-19 policy making. Specific examples include:

1. As additional COVID-19 vaccination mandates were imposed, Ad Lit was a critical partner to HRD in the development and implementation of mandatory vaccine requirements based on both state and federal requirements. These policies required an assessment of multi-jurisdictional law, and interpretation of legal challenges to the mandates.
2. Ad Lit works with CHCQ to develop regulatory policies and procedures to address issues with temporary management companies. CHCQ needs to be able to remove licensure from under performing temporary management companies, particularly in change of ownership situations.
3. Ad Lit supports HRD in setting workplace and workforce policies that impact the terms and conditions of employment. These policies require a legal assessment of current policies, and evaluation of proposed policies to assess legal implications and considerations. Specifically, Ad Lit provides policy guidance on protected employee leaves and performance which are very nuanced, fact specific and constantly evolving.
4. Ad Lit supports OOC with responding to control agencies (California State Auditor, Department of Finance, etc.) on audits and compliance reviews. The results of audits and compliance reviews often include needed policies to strengthen adherence to applicable statutes, regulations and mandates. Ad Lit advises on case law and legal implications of any recommended policy setting.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The CEA will have a high-degree of independence and decision making authority, working directly with the Chief Counsel and Deputy Director of OLS, HRD Deputy Director, OOC Deputy Director, CHCQ Deputy Director, Directorate, other Departmental Deputy Directors, Division Chiefs, and external partners including the CalHHS Chief Counsel on developing and implementing administrative litigation policies as well as providing strategy for employment litigation in courts of general jurisdiction.

Specific examples:

OOO – Most recently, OOC updated requirements for managers and supervisors to complete workplace violence and harassment training. Ad Lit worked with OOC on common law employees and determining requirements for common law employees. This required independent review of contracts, the Affordable Care Act and applicable case law and making independent decisions on impacted common law employees.

HRD – Ad-Lit was independently responsible for monitoring and advising HRD on multi-jurisdictional law and legal challenges to COVID-19 mandates. Ad Lit worked with HRD to ensure policies were in alignment with the most recent court rulings and federal and state legal requirements.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The CEA ACC position will both develop/implement new policies and interpret/implement existing policy across the department. One of the responsibilities of the proposed position is to review and assess existing policies to determine their effectiveness or need for changes. As public health programs and policies evolve or change, legal policies will need to be developed and implemented to support these programmatic changes.